$205,325 GROSS VERDICT – $20,533 NET VERDICT – MOTOR VEHICLE NEGLIGENCE – SINGLE VEHICLE COLLISION – VEHICLE STRIKES MULTIPLE OBJECTS INCLUDING HOUSE – CERVICAL VERTEBRA FRACTURE TO PLAINTIFF PASSENGER – TWO CERVICAL SURGERIES PERFORMED – 90% COMPARATIVE NEGLIGENCE FOR FAILURE TO WEAR SEATBELT.

Broward County, FL

The plaintiff was a 32-year-old female front-seat passenger in a vehicle driven by the defendant when the defendant lost control of the vehicle and it struck multiple objects including a house. The defendant maintained that he was not negligent because he suffered an unforeseeable epileptic seizure and was unable to avoid the collision. The defendant also asserted a seatbelt defense.

In November of 2005, the defendant was approaching the intersection of Sunset Strip and Northwest 81st Terrace in Sunrise, Florida. He lost control of his vehicle, causing it to strike multiple objects, including a curb, a tree and a house. Ultimately, the defendant's vehicle came to rest inside a home located on Sunset Strip. Both the plaintiff and defendant were transported by ambulance to the hospital.

The plaintiff was diagnosed with a C3-4 subluxation with jump facet fracture at the C4 level of her cervical spine, without cord lesion. The plaintiff underwent an emergency anterior cervical fusion with a bone graft and plating at C3-4. Her treating neurosurgeon testified that, following the initial surgery, the plaintiff developed progressive deterioration at C4-5 and C5-6 with kyphosis, angulation and large osteophytes. As a result, the plaintiff's neurosurgeon testified that he performed a second surgery involving an anterior fusion at C4-5 and C5-6 with plating. The plaintiff incurred $230,651 in medical expenses which she claimed were related to the accident and she was still treating for her injuries at the time of trial.

The plaintiff testified that she did not recall whether she was wearing a seat belt at the time of the accident, but that she typically wore her seat belt at all times. The plaintiff also maintained that she would still have sustained the same cervical injuries irrespective of her use of a safety restraint.

The plaintiff was employed as a secretary at the time of the accident. At the time of trial, she was self-employed as a dress maker and she made no claim for loss of earnings.

The defendant denied that he was negligent and alleged that he suffered an epileptic seizure which was not reasonably foreseeable. In response, the plaintiff contended that the defendant had a history of seizure(s) as evidenced by his involvement in a five-car collision in August 2005, just three months before the subject accident.

The plaintiff introduced evidence that, following the August 2005 accident, the defendant was found "convulsing" at the scene and was air-lifted to a hospital for serious injuries, including a near complete tongue laceration. The plaintiff also introduced evidence of a tape recorded statement given by the defendant following the August 2005 accident. In that statement, the defendant stated that he needed to follow-up with a neurologist and he might need to "take a pill for the rest of his life." The plaintiff alleged that the defendant failed to seek appropriate medical care resulting in the subject accident some three months later.

On damages, the defendant argued that the plaintiff had achieved a good result from her first cervical surgery and that she did not require the second cervical surgery which was performed. The defense stressed that the plaintiff is able to engage in most, if not all, of her everyday activities. The defendant argued that the plaintiff does not require $776,337 in future medical and related expenses as claimed by her treating physiatrist. The defendant additionally contended that the plaintiff's cervical injuries would have been prevented, if she had been wearing a seatbelt.

The jury found the defendant 10% negligent and the plaintiff 90% negligent for failure to wear a seatbelt. The plaintiff was awarded $205,325 in gross damages reduced to a net award of $20,533. The plaintiff has filed a post-trial motion which is currently pending.

REFERENCE

Plaintiff's neurosurgery expert: Heldo Gomez from Palm Beach Gardens, FL. Plaintiff's physiatry expert: Stuart Krost from Lake Worth, FL. Defendant's seatbelt expert: Richard Baretta from Houston, TX.

Disla vs. Blanco. Case no. 06-002192; Judge John Luzzo, 10-05-10.

Attorneys for defendant: Daniel J. Santaniello and Thomas J. Gibbons of Luks, Santaniello, Perez, Petrillo, Gold & Jones in Fort Lauderdale, FL.

COMMENTARY

Two of the chief issues for the jury to determine in this motor vehicle negligence action were whether the defendant was aware of his seizure disorder prior to the subject collision and whether the plaintiff's injuries could have been prevented by use of a seatbelt. Plaintiff's counsel introduced potentially damaging evidence in the form of reports that the defendant was found "convulsing" at the scene of a prior accident and had stated to his insurance carrier that he needed to follow-up with a neurologist and he may need to take a pill for the rest of his life.

The defense attempted to counter these detrimental facts by arguing that, in the prior accident, the defendant had an impact seizure and his reported convulsions were caused by the accident itself. The jury apparently found merit in this argument, as it assessed only 10% negligence against the defendant.

On the seatbelt issue, which was a significant portion of the case, the plaintiff asserted that she generally wore a seatbelt but could not recall if she was doing so at the time of the subject accident. The defense called a seatbelt expert who opined that the plaintiff's serious cervical injuries would have been prevented with the use of a restraint system.

Regarding damages, the defendant did not dispute that plaintiff fractured her cervical spine as a result of the collision. However, the defense contested the nature and extent of her damages and questioned the need for the second cervical surgery which had been performed.

During closing statements, plaintiff's counsel asked the jury to award past medical expenses of $230,651; future medical expenses of $776,337; past pain and suffering of $500,000 and future pain and suffering of $1.5 million for a total of $3,006,998 in damages. Defense counsel argued that, should the jury find the defendant liable, the plaintiff should be held 90% comparatively negligent. The jury came to that exact conclusion and awarded the plaintiff gross damages of $205,325 which was less than her claimed past medical expenses.